

REMARKS

I. INTRODUCTION

Claim 15 has been canceled. No new matter has been added. Thus, claims 1-14 and 16-26 are now pending in the present application. In view of the following remarks, it is respectfully submitted that all of the pending claims are allowable.

II. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN

Claims 1-14 and 17-26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Pat. No. 6,578,012 B1 to Storey ("the Storey patent") in view of U.S. Pat. No. 6,694,300 to Walker et al. ("the Walker patent"). (See 9/29/05 Office Action, p. 2).

The Storey patent describes an on-line, interactive incentive program. (See the Storey patent, col. 1, lines 63-65). A user accesses the incentive program by initially viewing a program homepage 300 which contains links to product pages of merchants participating in the incentive program. (Id. at col. 4, lines 1-16). When the user indicates a desire to purchase the product, a credit check routine 140 is executed, and, upon approval, a product order 160 is placed with the merchant of the product. (Id. at col. 5, lines 32-42). If the user is enrolled in the incentive program, award points are calculated based on the product and added to an account of the user. (Id. at col. 5, lines 45-55). After amassing points, the user may view an awards catalog via an award catalog homepage 400. (Id. at col. 7, lines 47-49). The user may redeem the points for awards, which are products from merchants participating in the incentive program. (Id. at col. 9, lines 51-61).

The Walker patent describes a system for providing supplementary product sales as a function of a purchase parameter at a point of sale ("POS") terminal. (See the Walker patent, Abstract). A merchant, by registering with a credit card issuer, can provide offers for

supplementary products ("upsells") at the POS terminal of other merchants. (*Id.* at col. 3, lines 18-39). Thus, when a customer uses the credit card at the POS terminal, a central controller connected thereto transmits an upsell product offer to the POS terminal. (*Id.* at col. 5, lines 14-25). The upsell product offer transmitted by the central controller depends upon the purchase parameter (e.g., product purchased, purchase price, date, time of day, etc.). (*Id.* at col. 5, lines 40-61). Depending on the type of upsell product offer and whether the customer accepts it, the central controller may credit/debit one or more financial accounts specific to the merchant, the customer and/or a further merchant (e.g., manufacturer of upsell product). (*Id.* at col. 8, lines 42-52).

Claim 1 of the present application recites a method for cross marketing products between a first company and a second company over an interconnected plurality of point-of-sale terminals and a server, wherein the method includes the steps of "calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database" and "allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount." After completing the first purchase at the first company, a consumer is awarded a discount on a second product at the second company. The first company contributes a predetermined dollar amount to the marketing fund account which is used to reimburse the second company for the discount on the second product. (*See* Specification, p. 4, lines 1-5). As the Examiner has recognized, the Storey patent does not teach or suggest "calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database" and "allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount." (*See* 9/29/2005 Office Action, p. 2). The Examiner attempts to cure this deficiency by suggesting that the Walker patent discloses these elements.

It is respectfully submitted that the Walker patent does not disclose or suggest "calculating and recording an amount of cross-marketing revenue realized from the first purchase to a marketing fund account in the database" and "allocating at least a portion of the cross-

marketing revenue in the fund to reimburse the second company for the discount," as recited in claim 1. Initially, it should be noted that like the Storey patent, the Walker patent does not teach cross-marketing between companies. The Walker patent clearly states, "[t]he present invention provides merchants with the ability to make sales through the POS terminals and stores of other merchants, without registering, associating or affiliating with any of those other merchants." (See the Walker patent, col. 3, lines 7-11). Thus, there is no collaboration between the merchants. This is evidenced by the fact that the customer does not receive (and is therefore unaware of) the upsell product offer until the purchase parameter meets conditions specified by the future merchant. (Id. at col. 5, lines 17-25). Such an arrangement has none of the characteristics of a cross-marketing arrangement. For example, unlike the present invention, it is not possible for the customer to take advantage of promotional offers to purchase items (at the merchant) that he would potentially purchase elsewhere. (See Specification, p. 4, lines 6-11).

In further contrast to the cross-marketing arrangement of the present invention, the Walker patent describes that when the customer indicates acceptance of the upsell product offer, the central controller adjusts financial accounts specific to the customer, the merchant at the POS terminal and/or the merchant of the upsell product. (See the Walker patent, col. 8, lines 42-52). Tables 210 (Fig. 8), 220 (Fig. 9) and 230 (Fig. 10) indicate the adjustments (e.g., credit/debit) to accounts identified by specific numbers. These accounts may be "credit card account[s] of the customer, the merchant controlling the [POS] terminal, or a merchant offering the accepted supplementary product." (Id. at Abstract). Because the merchants are unaffiliated, for each acceptance of an upsell product offer, only entity-specific accounts are adjusted (e.g., one merchant account and one customer account). Therefore, the merchant does not "allocat[e] at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount," as recited in claim 1.

The Examiner states that the Walker patent teaches the "reconciliation of money between a company associated with the primary product and the upsell product" and that the future merchant is "credited with funds in order to compensate [] for the benefit received from the

primary company [i.e., the merchant].” (See 9/29/2005 Office Action, p. 3). It is respectfully submitted that while the Walker patent does teach account reconciliation, the Examiner has misinterpreted the intent of this reconciliation. In the example pointed to by the Examiner, the customer pays \$4.50 to the merchant in return for a \$5 discount offered from the future merchant. The future merchant then receives \$4.50 from the merchant in compensation for the amount paid by the customer. (See the Walker patent, col. 10, lines 30-50). The \$4.50 paid to the future merchant does not constitute cross-marketing revenue since the merchants are unaffiliated and do not have a cross-marketing agreement. Furthermore, even if the \$4.50 were cross-marketing revenue, it is not “realized from the first purchase,” but is part of a second transaction. That is, the \$4.50 is not derived from the cost of the first purchase, but is a purchase in itself. Therefore, the Walker patent does not disclose or suggest “calculating and recording an amount of cross-marketing revenue realized from the first purchase to a *marketing fund account in the database*” and “*allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount,*” as recited in claim 1. Therefore, the Walker patent, taken alone or in combination with the Storey patent, does not render the subject matter of claim 1 obvious.

It is respectfully submitted that claim 1 is allowable over the Storey patent in view of the Walker patent for the reasons discussed above and that this rejection should be withdrawn. Because claims 2-12 depend from and, therefore, include all of the limitations of claim 1, it is respectfully submitted that these claims are also allowable.

Similar to claim 1, independent claim 13 is directed to a method for cross marketing products between a first company and a second company over an interconnected plurality of electronic sales terminals and a server, wherein the method includes the step of “crediting an account of the consumer maintained at the server with the discount” and “wherein the amount of money deposited into the account is a predetermined percentage of revenue realized from the purchase of the first product.” As noted above, neither the Storey patent nor the Walker patent, either alone or in combination discloses such an account. Therefore, it is respectfully submitted

that claim 13 is allowable for the same reasons as discussed above with regard to claim 1, and that the rejection of this claim should be withdrawn. Because claim 14 depends from, and therefore includes all of the limitations of claim 13, it is respectfully submitted that this claim is allowable, as well.

Similar to claim 1, independent claim 17 recites a method for cross marketing products between a first company and a second company over an interconnected plurality of point-of-sale terminals and a server, wherein the method includes the step of "recording an amount of the cross-marketing revenue realized from at least the first purchase to a marketing fund account." As discussed above with regard to claim 1, neither the Storey patent nor the Walker patent, either alone or in combination discloses "a marketing fund account." Therefore, Applicants respectfully submit that claim 17 is allowable, and that the rejection of this claim should be withdrawn. Because claims 18-26 depend from, and therefore include all of the limitations of claim 17, it is respectfully submitted that these claims are allowable at least for the reasons stated above.

Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Pat. No. 5,687,322 to Deaton et al. ("the Deaton patent") in view of the Walker patent. (See 9/29/05 Office Action, p. 3).

The Deaton patent describes a transaction processing system that uses a customer's financial instrument account number as a unique customer identification number. (See the Deaton patent, col. 4, lines 50-65). A database records the dates of transactions, and coupons are distributed to the customer based on frequency of shopping, dollar volume, or other shopping habit-based criteria. (*Id.* at col. 65, line 38 to col. 66, line 64). The decision to award a coupon may be based on the departments (e.g., meat, dairy, deli) from which products are purchased. (*Id.* at col. 69, lines 49-67).

Claim 16 recites a method for cross marketing products between a first department and a

second department at a company , wherein the method includes the steps of “depositing a predetermined amount of money into an account maintained on the server for the benefit of the second department in at least partial compensation for accepting the discount” and “at the second department, offering for sale the second product and standing ready to accept the discount at the same or a different one of the plurality of sales terminals on the second product, *wherein the money deposited into the account for the benefit of the second department amounts to a predetermined percentage of revenue realized from the purchase of the first product.*”

As the Examiner noted, the Deaton patent fails to teach or suggest “depositing money into an account on the server for the benefit of the second department in at least partial compensation for accepting the discount wherein the money deposited into the account for the benefit of the second department amounts to a predetermined percentage of revenue realized from the purchase of the first product.” (See 9/29/05 Office Action, p. 5). The Examiner attempts to cure this deficiency by suggesting that the Walker patent discloses these elements. However, as discussed above with reference to claim 1, the Walker patent fails to disclose or suggest “allocating at least a portion of the cross-marketing revenue in the fund to reimburse the second company for the discount.” Accordingly, it is respectfully submitted that the Walker patent does not cure this deficiency of the Deaton patent, and that neither the Deaton patent nor the Walker patent, either alone or in combination, disclose or suggest “wherein the money deposited into the account for the benefit of the second department amounts to a predetermined percentage of revenue realized from the purchase of the first product,” as recited in claim 16. Thus, Applicants respectfully request that the rejection of claim 16 be withdrawn.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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